

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<b>USDC SDNY</b> <b>DOCUMENT</b> <b>ELECTRONICALLY FILED</b> DOC #: _____ DATE FILED: <u>11/4/2020</u>
--

-----X  
JOSEPH GUGLIELMO, on behalf of himself  
and all others similarly situated,

Plaintiff,

-against-

TAKEYA USA CORPORATION,

Defendant.  
-----X

20-CV-5575 (VSB)

**ORDER OF DISMISSAL**

VERNON S. BRODERICK, United States District Judge:

Under the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). “[I]f the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.* “Good cause is generally found only in exceptional circumstances where the plaintiff’s failure to serve process in a timely manner was the result of circumstances beyond its control.” *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999) (internal quotation marks omitted).

On July 20, 2020, Plaintiff filed this action against Defendant Takeya USA Corporation. (Doc. 1.) Plaintiff obtained a summons on July 21, 2020. (Doc. 4.) Since that time, Plaintiff has not filed an affidavit of service or taken any other action to prosecute this case.

On October 27, 2020—when service was already overdue—I issued an order requiring Plaintiff either to file an affidavit of service demonstrating that he timely served Defendant, or if service had not been effectuated, submit a letter of no more than three (3) pages, supported by legal authority, demonstrating good cause as to why this case should not be dismissed pursuant

to Rule 4(m), by November 2, 2020. (Doc. 5.) I warned Plaintiff that failure to comply with the order would result in dismissal of this case. (*Id.*) Plaintiff has failed to comply with my order. Plaintiff has also failed to demonstrate good cause that would prompt me to extend the time for service. *See* Fed. R. Civ. P. 4(m).

Accordingly, it is hereby:

ORDERED that, in accordance with Rule 4(m), Plaintiff's claims against Defendant Takeya USA Corporation are DISMISSED WITHOUT PREJUDICE. The Clerk is respectfully directed to close the case.

SO ORDERED.

Dated: November 4, 2020  
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, slightly stylized font. The first name "Vernon" is written in a larger, more prominent script than the last name "Broderick".

Vernon S. Broderick  
United States District Judge